

Requested by Senator GORSEK

**PROPOSED AMENDMENTS TO  
SENATE BILL 802**

1 In line 2 of the printed bill, after “COVID-19” insert “; creating new  
2 provisions; amending ORS 656.802; and declaring an emergency”.

3 Delete lines 4 through 9 and insert:

4 **“SECTION 1. Section 2 of this 2021 Act is added to and made a part  
5 of ORS chapter 656.**

6 **“SECTION 2. (1) As used in this section:**

7 **“(a) ‘Emergency period’ means a period in which a declaration by  
8 the Governor of a state of emergency related to the coronavirus dis-  
9 ease 2019 (COVID 19) was in effect.**

10 **“(b) ‘Essential worker’ means a subject worker who:**

11 **“(A) At an employer’s direction, must or may have worked at the  
12 subject worker’s regular or temporarily assigned work site, other than  
13 the subject worker’s residence, during the emergency period in a lo-  
14 cation that was subject to the Governor’s emergency declaration; and**

15 **“(B) Worked in one of the following occupations:**

16 **“(i) Public safety personnel, as defined in ORS 181A.355, including  
17 employees of the Oregon Health and Science University and Metro who  
18 provide security services;**

19 **“(ii) Peace officer, as defined in ORS 133.005;**

20 **“(iii) Medical services provider, including emergency medical tech-  
21 nician, physician, nurse, physician assistant, nursing assistant, em-**

1 **ployee of a hospital or medical clinic, including the Oregon Health and**  
2 **Science University, pharmacy technician or employee of a home health**  
3 **care or long term care facility;**

4 **“(iv) Employee of a restaurant or retail store, including a grocery**  
5 **store;**

6 **“(v) Employee of a public, private or charter school;**

7 **“(vi) Employee of a child care facility, who cares for the dependent**  
8 **of another essential worker;**

9 **“(vii) Agricultural worker, as defined in ORS 315.163, or a worker**  
10 **in a food processing facility;**

11 **“(viii) Janitorial or sanitation worker; or**

12 **“(ix) An employee of a public body, as defined in ORS 174.109, or**  
13 **an employee of an agent of a public body who, while in direct contact**  
14 **with members of the public, provided transient housing, temporary**  
15 **shelter or health and wellness services.**

16 **“(c) ‘Occupational disease’ has the meaning given that term in ORS**  
17 **656.802.**

18 **“(d) ‘Occupational injury’ means a compensable injury that resulted**  
19 **from exposure to SARS-CoV-2 or development of a COVID-19 condition**  
20 **that arose out of and in the course of employment.**

21 **“(e) ‘Secondary effect’ means a debilitating medical condition that**  
22 **a medical professional has determined by a preponderance of the evi-**  
23 **dence was a likely result of a previous infection by SARS-CoV-2 or a**  
24 **previous development of a COVID-19 condition.**

25 **“(2) A subject worker’s development or presentation of a secondary**  
26 **effect within 30 years after the expiration or termination of the**  
27 **emergency period is presumed to be compensable as an occupational**  
28 **disease or occupational injury if:**

29 **“(a) The subject worker has not previously filed a claim for an oc-**  
30 **cupational disease or occupational injury that is directly related to**

1 exposure to SARS-CoV-2 or development of a COVID-19 condition; and

2 “(b) The subject worker was an essential worker during the emer-  
3 gency period and:

4 “(A) Was exposed at work to a known or suspected source of  
5 SARS-CoV-2 or COVID-19 and the employer, a medical provider or a  
6 federal, state or local public health authority required the subject  
7 worker to remain away from the subject worker’s work site;

8 “(B) Was exposed at work to a known or suspected source of  
9 SARS-CoV-2 or COVID-19 and became symptomatic for COVID-19;

10 “(C) Became symptomatic for COVID-19 and received a diagnosis  
11 of COVID-19 from a medical provider or a federal, state or local public  
12 health authority;

13 “(D) Received a laboratory-confirmed diagnosis of COVID-19 or in-  
14 fection by SARS-CoV-2; or

15 “(E) Received a presumptive positive test result for COVID-19 or  
16 infection by SARS-CoV-2.

17 “(3) An insurer or self-insured employer may rebut the presumption  
18 set forth in subsection (2) of this section, or may deny a claim filed  
19 under this section, only with clear and convincing evidence. A lack  
20 of an express confirmation of previous exposure to SARS-CoV-2 or  
21 previous development of a COVID-19 condition is not sufficient,  
22 standing alone, to rebut the presumption.

23 **“SECTION 3.** ORS 656.802 is amended to read:

24 “656.802. (1)(a) As used in this chapter, ‘occupational disease’ means any  
25 disease or infection arising out of and in the course of employment caused  
26 by substances or activities to which an employee is not ordinarily subjected  
27 or exposed other than during a period of regular actual employment therein,  
28 and which requires medical services or results in disability or death, in-  
29 cluding:

30 “(A) Any disease or infection caused by ingestion of, absorption of,

1 inhalation of or contact with dust, fumes, vapors, gases, radiation or other  
2 substances.

3 “(B) Any mental disorder, whether sudden or gradual in onset, which re-  
4 quires medical services or results in physical or mental disability or death.

5 “(C) Any series of traumatic events or occurrences which requires medical  
6 services or results in physical disability or death.

7 “**(D) Exposure to or infection by severe acute respiratory syndrome**  
8 **coronavirus 2 (SARS-CoV-2).**

9 “(b) As used in this chapter, ‘mental disorder’ includes any physical dis-  
10 order caused or worsened by mental stress.

11 “(2)(a) The worker must prove that employment conditions were the major  
12 contributing cause of the disease.

13 “(b) If the occupational disease claim is based on the worsening of a  
14 preexisting disease or condition pursuant to ORS 656.005 (7), the worker must  
15 prove that employment conditions were the major contributing cause of the  
16 combined condition and pathological worsening of the disease.

17 “(c) Occupational diseases shall be subject to all of the same limitations  
18 and exclusions as accidental injuries under ORS 656.005 (7).

19 “(d) Existence of an occupational disease or worsening of a preexisting  
20 disease must be established by medical evidence supported by objective  
21 findings.

22 “(e) Preexisting conditions shall be deemed causes in determining major  
23 contributing cause under this section.

24 “(3) Notwithstanding any other provision of this chapter, a mental disor-  
25 der is not compensable under this chapter unless the worker establishes all  
26 of the following:

27 “(a) The employment conditions producing the mental disorder exist in a  
28 real and objective sense.

29 “(b) The employment conditions producing the mental disorder are condi-  
30 tions other than conditions generally inherent in every working situation or

1 reasonable disciplinary, corrective or job performance evaluation actions by  
2 the employer, or cessation of employment or employment decisions attendant  
3 upon ordinary business or financial cycles.

4 “(c) There is a diagnosis of a mental or emotional disorder which is gen-  
5 erally recognized in the medical or psychological community.

6 “(d) There is clear and convincing evidence that the mental disorder arose  
7 out of and in the course of employment.

8 “(4) Death, disability or impairment of health of firefighters of any poli-  
9 tical division who have completed five or more years of employment as fire-  
10 fighters, caused by any disease of the lungs or respiratory tract, hypertension  
11 or cardiovascular-renal disease, and resulting from their employment as  
12 firefighters is an ‘occupational disease.’ Any condition or impairment of  
13 health arising under this subsection shall be presumed to result from a  
14 firefighter’s employment. However, any such firefighter must have taken a  
15 physical examination upon becoming a firefighter, or subsequently thereto,  
16 which failed to reveal any evidence of such condition or impairment of  
17 health which preexisted employment. Denial of a claim for any condition or  
18 impairment of health arising under this subsection must be on the basis of  
19 clear and convincing medical evidence that the cause of the condition or  
20 impairment is unrelated to the firefighter’s employment.

21 “(5)(a) Death, disability or impairment of health of a nonvolunteer fire-  
22 fighter employed by a political division or subdivision who has completed  
23 five or more years of employment as a nonvolunteer firefighter is an occu-  
24 pational disease if the death, disability or impairment of health:

25 “(A) Is caused by brain cancer, colon cancer, stomach cancer, testicular  
26 cancer, prostate cancer, multiple myeloma, non-Hodgkin’s lymphoma, cancer  
27 of the throat or mouth, rectal cancer, breast cancer or leukemia;

28 “(B) Results from the firefighter’s employment as a nonvolunteer fire-  
29 fighter; and

30 “(C) Is first diagnosed by a physician after July 1, 2009.

1       “(b) Any condition or impairment of health arising under this subsection  
2 is presumed to result from the firefighter’s employment. Denial of a claim for  
3 any condition or impairment of health arising under this subsection must be  
4 on the basis of clear and convincing medical evidence that the condition or  
5 impairment was not caused or contributed to in material part by the  
6 firefighter’s employment.

7       “(c) Notwithstanding paragraph (b) of this subsection, the presumption  
8 established under paragraph (b) of this subsection may be rebutted by clear  
9 and convincing evidence that the use of tobacco by the nonvolunteer fire-  
10 fighter is the major contributing cause of the cancer.

11       “(d) The presumption established under paragraph (b) of this subsection  
12 does not apply to prostate cancer if the cancer is first diagnosed by a phy-  
13 sician after the firefighter has reached the age of 55. However, nothing in  
14 this paragraph affects the right of a firefighter to establish the  
15 compensability of prostate cancer without benefit of the presumption.

16       “(e) The presumption established under paragraph (b) of this subsection  
17 does not apply to claims filed more than 84 months following the termination  
18 of the nonvolunteer firefighter’s employment as a nonvolunteer firefighter.  
19 However, nothing in this paragraph affects the right of a firefighter to es-  
20 tablish the compensability of the cancer without benefit of the presumption.

21       “(f) The presumption established under paragraph (b) of this subsection  
22 does not apply to volunteer firefighters.

23       “(g) Nothing in this subsection affects the provisions of subsection (4) of  
24 this section.

25       “(h) For purposes of this subsection, ‘nonvolunteer firefighter’ means a  
26 firefighter who performs firefighting services and receives salary, hourly  
27 wages equal to or greater than the state minimum wage, or other compen-  
28 sation except for room, board, lodging, housing, meals, stipends, reimburse-  
29 ment for expenses or nominal payments for time and travel, regardless of  
30 whether any such compensation is subject to federal, state or local taxation.

1 ‘Nominal payments for time and travel’ includes, but is not limited to, pay-  
2 ments for on-call time or time spent responding to a call or similar noncash  
3 benefits.

4 “(6) Notwithstanding ORS 656.027 (6), any city providing a disability and  
5 retirement system by ordinance or charter for firefighters and police officers  
6 not subject to this chapter shall apply the presumptions established under  
7 subsection (5) of this section when processing claims for firefighters covered  
8 by the system.

9 “(7)(a) As used in this subsection:

10 “(A) ‘Acute stress disorder’ has the meaning given that term in the  
11 DSM-5.

12 “(B) ‘Covered employee’ means an individual who, on the date a claim is  
13 filed under this chapter:

14 “(i) Was employed for at least five years by, or experienced a single  
15 traumatic event that satisfies the criteria set forth in the DSM-5 as Criterion  
16 A for diagnosing post-traumatic stress disorder while employed by, the state,  
17 a political subdivision of the state, a special government body, as defined in  
18 ORS 174.117, or a public agency in any of these occupations:

19 “(I) A full-time paid firefighter;

20 “(II) A full-time paid emergency medical services provider;

21 “(III) A full-time paid police officer;

22 “(IV) A full-time paid corrections officer or youth correction officer;

23 “(V) A full-time paid parole and probation officer; or

24 “(VI) A full-time paid emergency dispatcher or 9-1-1 emergency operator;

25 and

26 “(ii) Remains employed in an occupation listed in sub-subparagraph (i) of  
27 this subparagraph or separated from employment in the occupation not more  
28 than seven years previously.

29 “(C) ‘DSM-5’ means the fifth edition of the Diagnostic and Statistical  
30 Manual of Mental Disorders published by the American Psychiatric Associ-

1 ation.

2 “(D) ‘Post-traumatic stress disorder’ has the meaning given that term in  
3 the DSM-5.

4 “(E) ‘Psychiatrist’ means a psychiatrist whom the Oregon Medical Board  
5 has licensed and certified as eligible to diagnose the conditions described in  
6 this subsection.

7 “(F) ‘Psychologist’ means a licensed psychologist, as defined in ORS  
8 675.010, whom the Oregon Board of Psychology has certified as eligible to  
9 diagnose the conditions described in this subsection.

10 “(b) Notwithstanding subsections (2) and (3) of this section, if a covered  
11 employee establishes through a preponderance of persuasive medical evidence  
12 from a psychiatrist or psychologist that the covered employee has more  
13 likely than not satisfied the diagnostic criteria in the DSM-5 for post-  
14 traumatic stress disorder or acute stress disorder, any resulting death, disa-  
15 bility or impairment of health of the covered employee shall be presumed to  
16 be compensable as an occupational disease. An insurer or self-insured em-  
17 ployer may rebut the presumption only by establishing through clear and  
18 convincing medical evidence that duties as a covered employee were not of  
19 real importance or great consequence in causing the diagnosed condition.

20 “(c) An insurer’s or self-insured employer’s acceptance of a claim of  
21 post-traumatic stress disorder or acute stress disorder under this subsection,  
22 whether the acceptance was voluntary or was a result of a judgment or or-  
23 der, does not preclude the insurer or the self-insured employer from later  
24 denying the current compensability of the claim if exposure as a covered  
25 employee to trauma that meets the diagnostic criteria set forth as Criterion  
26 A in the DSM-5 for post-traumatic stress disorder or acute stress disorder  
27 ceases being of real importance or great consequence in causing the disabil-  
28 ity, impairment of health or a need for treatment.

29 “(d) An insurer or self-insured employer may deny a claim under para-  
30 graph (c) of this subsection only on the basis of clear and convincing medical



1 evidence.

2 “(e) Notwithstanding ORS 656.027 (6), a city that provides a disability or  
3 retirement system for firefighters and police officers by ordinance or charter  
4 that is not subject to this chapter, when accepting and processing claims for  
5 death, disability or impairment of health from firefighters and police officers  
6 covered by the disability or retirement system, shall apply:

7 “(A) The provisions of this subsection; and

8 “(B) For claims filed under this subsection, the time limitations for filing  
9 claims that are set forth in ORS 656.807 (1) and (2).

10 **“SECTION 4. Section 2 of this 2021 Act and the amendments to ORS**  
11 **656.802 by section 3 of this 2021 Act apply to claims for occupational**  
12 **disease or occupational injury that are submitted on and after the ef-**  
13 **fective date of this 2021 Act and to claims for occupational disease or**  
14 **occupational injury that were submitted and were pending but for**  
15 **which compensability was not yet determined before the effective date**  
16 **of this 2021 Act.**

17 **“SECTION 5. This 2021 Act being necessary for the immediate**  
18 **preservation of the public peace, health and safety, an emergency is**  
19 **declared to exist, and this 2021 Act takes effect on its passage.”.**

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